

Complaint reference:

[REDACTED]

Complaint against

Lichfield District Council

The Ombudsman's final decision:

Council has agreed a local settlement for this complaint.

The complaint

- 1 That Lichfield District Council unreasonably failed to check whether Mr M's tenant was in more than eight weeks rent arrears, despite the fact that he had telephoned the Council on a number of occasions to check when the application would be processed.

The Ombudsman's role and powers

- 2 The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the Council has acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. We look at the administrative actions of the Council but we do not challenge decisions that have been made properly even though people may disagree with them. Nor can we challenge the professional judgement of the Council's officers.

How I considered this complaint

- 3 As part of the investigation, I have:
 - considered the complaint and Mr M's comments;
 - made enquiries of the Council and considered the comments and documents the Council provided.

What I found

- 4 Mr M is a landlord. In January 2011 his tenant claimed housing benefit. Benefit payments were initially made direct to the tenant. In March Mr M provided evidence to show the tenant had more than eight weeks rent arrears. Housing benefit payments were therefore made direct to Mr M, as landlord. The benefit claim ceased in November.
- 5 On 14 February 2012 the Council was notified that the tenant was claiming jobseeker's allowance (JSA), although no housing benefit application received. Mr M contacted the Council on 27 February to ask whether his tenant had submitted a housing benefit application. A benefit application form was sent to his tenant later that day. Mr M telephoned the Council again on 5 March to see what was happening.
- 6 On 6 March a completed housing benefit claim form was received from Mr M's tenant. The first payment was made to Mr M, as landlord. The claim was

suspended on 12 March though when the Council was informed that JSA was no longer in payment. The Council was notified that JSA was back in payment on 22 March. Mr M says that he telephoned the Council on the 26 March and 5 April for an update on the claim. Mr M's tenant telephoned the Council on 10 April. He advised that he was in around two weeks rent arrears and requested that payments continue to the landlord. He also advised that he would provide a rent statement from his landlord to show his current rent position. It appears the Council initially intended to wait for that statement to be provided. However, when benefit was put back into payment on 17 April the tenant had not provided the rent statement. A housing benefit payment was issued on 23 April to the tenant. Mr M contacted the Council later that day to advise that the tenant was in more than eight weeks rent arrears. The claim was again suspended pending confirmation. When confirmation was provided housing benefit was put back into payment on 14 May, paid directly to Mr M.

Agreed action

7. I recommend that the Council pay Mr M £492, which is the amount issued to his tenant on 23 April, along with £100 compensation to reflect the time and trouble he had to go to in order to pursue the complaint.

Decision

8. Mr M is concerned because he says that the Council should have made enquiries to establish whether his tenant was in more than eight weeks arrears of rent before putting the claim back into payment following a short period of suspension in 2012. As the Council has advised Mr M, there is no requirement for it to undertake enquiries to establish a tenant's rent arrears situation. Nor is there any requirement for the Council to make payments direct to the landlord unless it has evidence to show that the tenant is in eight weeks or more rent arrears. In this case I am satisfied that at the point at which the Council put benefit back into payment it had no evidence to show that the tenant was in eight weeks or more of rent arrears. I therefore do not consider that the Council was required to make benefit payments to Mr M, as landlord, when benefit was put back into payment in April 2012.
9. However, the Council also has discretion to make housing benefit payments direct to a landlord in other circumstances Regulation 96(3A) states that local authorities (LA) can make payment to the landlord where the LA considers that the claimant is likely to have difficulty in relation to the management of his financial affairs, where the LA considers that it is improbable that the customer will pay his rent (for example the LA knows from past experience that the tenant is likely to abscond with the rent payment) and where the customer has previously had payments made to the landlord under Regulation 95. I am concerned that the Council failed to consider whether benefit payments should be made to Mr M, as landlord, when it put the tenant's benefit back into payment in April 2012. I say that because although I note that the tenant advised the Council in a telephone call on 10 April 2012 that he only had two weeks rent arrears, which was incorrect, he also asked at that point for payments to continue to his landlord. In addition, the Council had received a number of telephone calls from Mr M to find out what was happening with his tenant's benefit application. There is no documentary evidence to suggest that Mr M advised the Council during any of those telephone conversations that his tenant was in more than eight weeks rent arrears. I therefore do not consider that the Council was required under regulation

95 of the housing benefit regulations to make payments direct to the landlord at that point. However, it seems to me that the fact that Mr M was telephoning the Council to find out about when his tenant's housing benefit application would be processed should have notified the Council that it was likely his tenant was not making rent payments. I cannot see why there would be any reason for a landlord to contact the Council about a tenant's benefit application in any other circumstances, unless the Council had been notified that the tenant wished his landlord to deal with all benefit issues. I have seen no evidence to suggest that this was the case here. Given that the tenant had requested that housing benefit payments continue to the landlord, housing benefit payments had previously been made direct to the landlord as the tenant had not been making payments and as the landlord was telephoning the Council to find out when the benefit application was to be processed I consider that the Council should have considered exercising its discretion to make housing benefit payments direct the landlord at that point. Failure to do so is maladministration.

- 10 It seems to me that if the Council had considered all of the evidence on the file, plus the tenant's request for the housing benefit to be made directly to his landlord, it is likely that the Council would either have made benefit payments direct to Mr M or made further enquiries to establish the actual rent situation, which would also have resulted in payments being made direct to Mr M given that the tenant was in more than eight weeks rent arrears. I therefore consider that the Council should make a payment of £492 to Mr M, which is the amount that it paid to his tenant in April 2012. I also consider that the Council should make an additional payment of £100 to reflect Mr M's time and trouble in pursuing the complaint.
- 11 In reaching that view I have taken into account the Council's representation that Mr M was aware of the circumstances in which the Council was able to make payments direct to the landlord. It points out that Mr M had received housing benefit payments direct to him in 2011 when he provided evidence to show that his tenant was in more than eight weeks rent arrears. The Council's implication is that Mr M should have known that he needed to provide evidence to show that his tenant was in more than eight weeks rent arrears in order for the Council to consider payment direct to him. However, the circumstances in 2012 were different to those in 2011. First, the benefit claim was not a new claim. Instead, it was the reinstatement of a suspended claim where payment had previously been made direct to the landlord. In those circumstances it is not surprising that Mr M believed payments would continue to be made direct to him and that he would not need to provide additional evidence to the Council. In addition, as I said in the previous paragraph, the tenant had in any case requested that payments be made direct to the landlord and Mr M had been contacting the Council during the suspension period to find out when benefit would be put back into payment. In those circumstances I see no reason why Mr M would have understood that he needed to reiterate that payments needed to be made direct to him as his tenant was in more than eight weeks rent arrears. I therefore consider that the remedy outlined in the previous paragraph is an appropriate outcome for the complaint.